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No. 01-929

Supreme Court, U.S.
FILED
FEB 4 2002
CLERK

IN THE

Supreme Court of the United States

DAIMLERCHRYSLER AKTIENGESELLSCHAFT,
Petitioner,

v.

SCOTT OLSON, INDIVIDUALLY AND AS INDEPENDENT EXECTOR OF THE ESTATE OF KAREN L. OLSON, AND VICKIE OLSON,
Respondents.

On Petition for a Writ of Certiorari to the Texas Court of Appeals, Third Appellate District

BRIEF OF SOUTHERN COMPANY, ET AL., AS AMICI CURIAE SUPPORTING PETITIONER AND SUGGESTING THAT CONSIDERATION OF THE PETITION BE DEFERRED

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INTEREST OF THE AMICI CURIAE

Amici are defendants in a suit brought in Illinois that raises an issue similar to that presented by petitioner.[1] See *Alderson v. Southern Company*, 321 Ill. App. 3d 832, 747 N.E. 2d 926 (2001). Amici will file, by February 18, 2002, a petition for a writ of certiorari seeking to review the judgment in that case. Amici's certiorari petition will present a question similar to the question presented by petitioners in the instant case. Amici believe, however, that their case will present a superior vehicle for the Court to consider the issues raised by the instant petition.

Amici accordingly submit this brief to apprise the Court of their forthcoming certiorari petition, and to ask the Court to defer consideration of the instant petition until amici's petition has been filed and is ripe for this Court's review. Because the Court's disposition of the instant petition may significantly affect amici's forthcoming certiorari petition, amici have a direct and substantial interest in this case.[2]

ARGUMENT

Amici, five related firms, were named as defendants in a suit brought in Illinois. In *Alderson v. Southern Company*, 321 Ill. App. 3d 832, 747 N.E. 2d 926 (2001), the Illinois Appellate Court ruled that Illinois courts could assert general personal jurisdiction over each of the amici. Amici will file a petition for a writ of certiorari, seeking review of that decision, by February 18, 2002. That petition (which will be styled *Southern Company v. Alderson*) will present a question that is similar in important respects to the question presented here.

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[1] The amici are identified in the Rule 29.6 statement appended to this brief. No counsel for a party authored this brief in whole or in part. No person or entity, other than amici and their counsel, made a monetary contribution to the preparation or submission of this brief.

[2] We have filed with the Clerk letters from counsel for the parties consenting to the filing of this brief.

Amici agree with petitioners that the issue of the proper scope of general jurisdiction, which is raised by the question presented in the instant case, merits further review. We believe, however, that the forthcoming certiorari petition in *Southern Company* will be a superior vehicle for addressing that issue. We therefore respectfully suggest that this Court defer consideration of the instant petition until the petition in *Southern Company* has been filed and is ripe for this Court's consideration. The Court should then dispose of the instant petition as appropriate, in light of the disposition of the forthcoming petition in *Southern Company*.

1. The petition in the instant case presents a question concerning the limits that the Due Process Clause of the Fourteenth Amendment places on the power of state courts to assert general personal jurisdiction over non-resident corporate defendants. General jurisdiction is the power to adjudicate any claim against a defendant, even if the claim is unrelated to the defendant's contacts with the forum state. General jurisdiction is contrasted with specific jurisdiction, which is the power to adjudicate a claim arising out of the defendant's contacts with the state. See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 & nn. 8, 9 (1984). In *Southern Company*, as in this case, the lower court held that the state has the power to assert general jurisdiction over a firm that was not incorporated in that state, did not have its principal place of business there, and had no extensive contacts with the state.

We agree with petitioners that the decision below in this case is incorrect. We further agree that the question of the proper scope of general jurisdiction urgently merits this Court's review. In the nearly 60 years since this Court's decision in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), which reconceptualized the constitutional limits on personal jurisdiction, the Court has addressed the question of

specific jurisdiction at least eleven times.[3] Those decisions have expanded, and also clarified, the permissible scope of specific jurisdiction. But since *International Shoe* the Court has decided only two cases that addressed general jurisdiction.[4] Left without clear guidance, in a landscape where specific jurisdiction has evolved rapidly, the lower courts are badly split on the proper scope of general jurisdiction.

2. In our view, however, *Southern Company* will present a superior vehicle for addressing this important issue, for several reasons.

a. The facts of *Southern Company* present the jurisdictional issue with exceptional clarity. The plaintiffs in *Southern Company*, who sued in Illinois, allege that they were injured in an industrial accident that occurred at an electrical generating plant operated by one of the amici. The plant is located in Indiana. The *only* relevant contact between amici and Illinois—the only contact that the lower court relied on, as a basis for asserting general jurisdiction—is that the bulk of the output of the plant where the accident occurred is sold, in Indiana, to an Illinois firm. None of the amici has any subsidiaries, offices, property, agents, or employees in Illinois; none engages in any relevant promotional activity in Illinois, any litigation in Illinois, any relevant internet communication, or any other activity that the lower court relied on as a basis for asserting jurisdiction.

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[3] See, *e.g.*, *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Calder v. Jones*, 465 U.S. 783 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982); *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950).

[4] *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), and *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

The question of general jurisdiction in *Southern Company* therefore stands out in stark relief. We agree with petitioner that the contacts between petitioner and Texas are plainly insufficient to sustain general jurisdiction. But that network of contacts is significantly more complex than those involved in *Southern Company*, and potentially raises more complex issues about when general jurisdiction may be asserted.

b. *Southern Company*, unlike the instant case, presents a pure question of general jurisdiction, free from any entanglement with issues of specific jurisdiction. In *Southern Company* the lower court explicitly held that amici were not subject to specific jurisdiction. See 321 Ill. App. 3d at 847, 747 N.E.2d at 939 ("[P]laintiffs' causes of action do not arise from any of defendants' contracts or transactions in Illinois"); 321 Ill. App. 3d at 858, 747 N.E. 2d at 947. In the instant case, the court below made no such holding; after ruling that there was general jurisdiction, it did not reach the question of specific jurisdiction. See Pet. App. 26a.

The claim in the instant case arose out of an accident in the forum state. Petitioner demonstrates that the instant case presents a complex and important question of specific jurisdiction (Pet. 28-30), and petitioner states that respondent will "no doubt" seek to defend the judgment in the instant case on the ground that the Texas courts may exercise specific jurisdiction over petitioner (Pet. 28). The Court may wish to address the question of general jurisdiction in a case that presents the general jurisdiction issue cleanly: a case in which—as the lower court explicitly ruled in *Southern Company*—there are no contacts of any kind that are related to the litigation, and in which, as in *Southern Company*, the state's jurisdiction depends entirely on its assertion that it has power to hear any claim whatever against the defendant.

c. Finally, petitioner is a German corporation with its principal place of business in Germany. In *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), eight

Justices agreed that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Id.* at 114. While this principle further points up the error of the Texas court below, it may also make this case a less satisfactory vehicle for clarifying the rampant confusion in the lower courts about personal jurisdiction. That is because a ruling in this case, involving a foreign defendant who is entitled to the special protections described in *Asahi*, will have limited value in guiding the exercise of general jurisdiction over domestic defendants.

For these reasons, we believe that the Court's deliberations would be aided by deferring consideration of the petition in this case until the petition for certiorari in *Southern Company* has been filed and is ripe for this Court's review.

Respectfully submitted,

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February 4, 2002